



U.S. Citizenship  
and Immigration  
Services

FILE:

Office: TEXAS SERVICE CENTER Date:

JUN 16 2004

IN RE:

Petitioner:

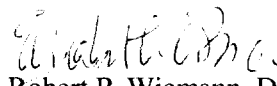
Beneficiary:

PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a youth minister. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition. The director further determined that the petitioner had failed to establish that it had extended a valid job offer to the beneficiary.

On appeal, counsel submits additional documentation.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States.” The regulation indicates that the “religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.”

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on April 30, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

The regulation at 8 C.F.R. § 204.5(m)(2) defines minister as:

[A]n individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

The regulation further states, in pertinent part, that:

*Religious vocation* means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

The petitioner submitted a copy of a certificate of graduation from the Korea Baptist Theological University/Seminary showing that the beneficiary began matriculating at the school in 1995 and received his Bachelor of Arts degree in Theology in February of 2000. The petitioner also submitted a "Certificate of Experience" from the pastor of the Sungeun Baptist Church attesting that the beneficiary served as a "Youth Minister" with the church from January 1998 to December 1999. A separate "Certificate of Compensation" indicates that the beneficiary was paid ₩450,000 (\$375) per month plus an occasional monthly bonus of ₩300,000 (\$250). The petitioner also submitted a "Certificate of Experience" from the Sangsoo Baptist Church, stating that the beneficiary worked as a minister at the church from January 2000 to September 2000. A "Certificate of Compensation" from the church indicates he was paid ₩550,000 (\$458.33) per month with an occasional monthly bonus of ₩250,000 (\$208.33) or ₩300,000 (\$250).

The record also contains a daily work schedule of the beneficiary's activities at both of these churches. The document appears to have been compiled by the beneficiary. The record contains no corroborating evidence of the beneficiary's job responsibilities in the two churches prior to his arrival in the United States and commencing his work for the petitioner.

The petitioner's pastor, [REDACTED], states that the beneficiary became a member of the church in October 2000, and began working as a full time volunteer youth minister at that time. Included in the record is a daily work schedule detailing the beneficiary's work for the petitioner. Again, the schedule appears to be one compiled by the beneficiary, although Reverend Park states that the beneficiary's duties involves, among other things, assisting the pastor, providing spiritual and moral guidance and assistance to church members, teaching Sunday school, developing Christian education programs, and research in the field of Christian doctrines and theories.

The list of the beneficiary's duties does not include traditional religious rites such as performing marriage, baptism, or interment ceremonies. There is no evidence that the beneficiary has been ordained as a minister in his denomination. The record does not establish that the beneficiary was required to demonstrate a commitment to a religious life such as by taking vows. The record does not establish that the beneficiary is a minister within the meaning of the regulation or that he has a religious vocation.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

The pertinent regulations were drafted in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, who are not employed *per se* in the conventional sense of salaried employment, but are fully financially supported and maintained by their religious institution and are answerable to that institution. Laypersons, on the other hand, are employed in the conventional sense of salaried employment. The regulations recognize this distinction by requiring that in order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of salaried employment and will not be dependent on supplemental employment. See 8 C.F.R. § 204.5(m)(4). Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, CIS interprets its own

regulations to require that, in cases of lay persons seeking to engage in a religious occupation, the prior experience must have been full-time salaried employment in order to qualify as well.

The petitioner stated it compensated the beneficiary for his work by paying his apartment rent and by providing him with food and gas. The record contains a copy of an apartment lease for the period November 2000 through April 2001. Reverend Park, the beneficiary and another individual signed the lease. In response to the director's Notice of Intent to Deny, the petitioner submitted copies of checks to the apartment complex for the months of September and October of 2001 and February 2002. Another check made payable to the [REDACTED] for the amount of the rent is dated in January of 2002. The petitioner also included a copy of a March 25, 2002 check made payable to the beneficiary in the amount of \$75.00.

On appeal, counsel submits copies of checks made payable to the apartment complex or to the beneficiary in January through June of 2003, September through December of 2002, and August and December of 2001. Counsel also submitted copies of checks written on the joint account of [REDACTED] (the beneficiary is not identified further in the record). These checks are to the apartment complex (June 30, 2001) the phone company (from February to June 2001), and the electric company (March and April 2001).

The petitioner submits no corroborating evidence that the beneficiary was employed full time in the occupation in Korea at any time during the two-year period immediately preceding the visa petition. The record reflects that the beneficiary was a student during most of the first year of the qualifying period. Pursuing an undergraduate academic degree for the purpose of preparing oneself to pursue a religious life does not satisfy the requirement of the statute. A student of theology cannot be considered as having been continuously working in a religious vocation or occupation.

The record does not establish that the beneficiary was fully compensated for his services by the petitioner during the last year of the qualifying period. Although the petitioner states it compensated the beneficiary by paying for his food, shelter and lodging, the evidence provided does not account for every month of the beneficiary's employment with the petitioner. Further, the evidence indicates that individuals rather than the church itself paid at least part of the beneficiary's living expenses. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

The record does not establish that the beneficiary was engaged in the qualifying religious occupation for two years immediately preceding the filing of the visa classification preference petition.

The petitioner must also demonstrate that a qualifying job offer has been tendered.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

*Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

The director determined that the petitioner had not established that it had made an offer of permanent employment or that the beneficiary will not be solely dependent on supplemental employment or the solicitation of funds for support.

The petitioner states that the beneficiary has been working with it as a full time youth minister since October 2000, and that it proposed to pay the beneficiary \$1,200 per month. Reverend Park states that, in addition to the duties previously mentioned, the beneficiary will "instruct people who seek conversion to [the] faith, visit [the] sick and shut-ins and help [the] poor, counsel those in spiritual need and comfort [the] bereaved." On appeal, [REDACTED] stated that the church had been paying the beneficiary \$800.00 per month but that would increase to \$1,300 per month in July 2003. The evidence reflects that the church paid the beneficiary's rent for several months. The evidence does not reflect that the petitioner has paid the beneficiary in funds.

The failure of the petitioner church to consistently pay the beneficiary's expenses of \$800.00 per month as indicated undermines its stated intention to continue to pay him a salary on a permanent basis. Further, as discussed below, the record does not sufficiently establish that the beneficiary will not be solely dependent on supplemental employment or the solicitation of funds for his support.

Beyond the decision of the director, the petitioner has not established its ability to pay the proffered salary. This deficiency constitutes another ground for dismissal of the appeal and raises the issue of the validity of the job offer. The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part, that:

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

As noted above, the petitioner submitted copies of checks indicating that it had paid the beneficiary's rent for some, though not all, months that he has been associated with the church. The petitioner also indicated that it had paid for the beneficiary's food and gas expenses. However, the only evidence of payments by the petitioner other than the checks for rent was a \$75.00 check to the beneficiary that was later identified as having been for food. The documentation provided does not evidence compensation in the amount approaching the \$1,200 to \$1,300 monthly salary that the petitioner proposes to pay the beneficiary.

The petitioner also submitted copies of bank its bank statements for the months of December 2000, January and March 2001, March 2002, and May through August of 2002. The monthly balances range from a high of over \$8,900 to a low of minus \$520.

The above-cited regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence. The evidence submitted by the petitioner does not establish the continued ability of the petitioner to pay the beneficiary's salary. From the available evidence, we cannot conclude that the petitioner has been able to pay the beneficiary's proffered wage since the petition's filing date.

The director determined that the petitioner had not established that the beneficiary's sole purpose for entering the United States was to work for the petitioner.

We withdraw this determination by the director. The regulation does not require that the alien's initial entry into the United States must be solely for the purpose of performing work as a religious worker. "Entry," for purposes of this classification, would include any entry under the immigrant visa granted under this category or would include the alien's adjustment of status to the immigrant visa.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.